

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00090/2017
With MA No. 290/00080/17**

RESERVED ON: 30.10.2018

Jodhpur, this the 27th November, 2018

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

1. Umaid Singh S/o Shri Mangi Lal, aged about 38 years, resident of Qtr No. 210/45, Air Force Officers Mess, Dhobi Ghat, Jodhpur, at present employed on the post of MTS in the office of C Ad O, No. 32 Wing AF C/o 56 APO.
2. Suresh S/o Shri Ramdev, aged about 38 years, resident of Village Pabupura, Distt. Jodhpur, at present employed on the post of MTS in the office of Logistic (R & D), No. 32 Wing A F C/o 56 APO.
3. Manohar Singh S/o Shri Shyam Singh, aged about 39 years, resident of Qtr No. 210/49, Air Force Officers Mess, Dhobi Ghat, Jodhpur, at present employed on the post of MTS in the office of 8 P & S C/o No. 32 Wing A F C/o 56 APO.
4. Abdul Aziz Khan S/o Shri Abdul Karim Khan, aged about 40 years, resident of Qtr No. 210/46, Air Force Officers Mess, Dhobi Ghat, Jodhpur, at present employed on the post of MTS in the office of Station Health Organisation, No. 32 Wing A F C/o 56 APO.

.....Applicants

By Advocate : Mr J.K. Mishra

Versus

1. The Union of India through Secretary to Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Air Officer Personnel (AOP), Air Headquarters, Vayu Bhawan, New Delhi-110106.
3. Air Officer Commanding in Chief, Hq South Western Command, IAF, Sector-9, Gandhinagar (Gujarat) – 09.
4. Air Officer Commanding, Air Force Station, Jodhpur Ratanada-Jodhpur-342011.

.....Respondents

By Advocate : Mr. Rameswar Dave .

ORDER

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That the applicant may be permitted to pursue the joint application on behalf of four applicants under rule 4(5) of CAT Procedure Rule 1987.
- (ii) That impugned part III (A) order dated 09.07.2009 (Annex. A-1) to the extent of granting temporary status to the applicants from 27.01.2007 and order dated 14.09.2016 (Annex. A/2), may be declared illegal and the same may be quashed.
- (iii) That the respondents to fix the date of grant of temporary status in 2003 (instead of 27.01.2007), when they completed more than 265 days in consecutive two years and allowed due pensionary benefits under CCS (Pension) Rules 1972 and allowed all benefits including deduction of GPF as per rules in force.
- (iv) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

2. The brief facts of the case are that the applicant No. 1 to 3 and applicant No. 4 engaged as Seasonal Anti-Malaria Lascar (SAML) on 26.04.2001 and 25.05.2001 respectively. They were continuously engaged as SAML in each subsequent season till 2006. Their cases were taken up before higher authorities for grant of temporary status under Seasonal Anti Malaria Lascars (Grant of Temporary Status & Regularization) Scheme of IAF, 1997 dated 21.08.1997 (Annex. A/3) but an objection was raised that their names had not been sponsored through employment exchange and therefore, their candidature for further

engagement was refused. The applicants preferred OA No. 118/2006 (Suresh & Ors Vs Union of India & Ors) and the same was allowed vide order dated 14.09.2006 as modified vide corrigendum dated 20.10.2006. This Tribunal in the aforesaid OA held the applicant entitled to all consequential benefits including consideration for grant of Temporary status/regularization against Group 'D' posts etc. as per the SAML Scheme in vogue. Consequently, the applicants were granted temporary status w.e.f. 27.01.2007 vide order dated 09.02.2007 (Annex. A/1) issued by the respondent No. 4 and thereafter, their services were regularized w.e.f. 14.06.2007 vide order dated 19.06.2007 (Annex. A/5). The grievance of the applicants herein that Govt. of India, Ministry of Finance issued a Notification dated 22.12.2003 (Annex. A/6) introducing a new defined contribution pension system for new entrants. The applicants were under the impression that the date of grant of temporary status may not make any difference to them as there was no effect on their pay. The applicants presumed that they are not the new entrants and therefore, old pension scheme would be applicable to them since they were appointed in the year 2001 and new pension scheme would be applicable w.e.f. 01.01.2004. The DoPT issued an OM dated 26.02.2016 (Annex. A/7) whereby the casual labours who were granted temporary status under Scheme of 1993 would be entitled for contributing for GPF and 50% of their temporary service shall

be counted for the purpose of pension. Therefore, applicant No. 1 submitted detailed representation dated 12.04.2016 (Annex. A/8) requesting preponing the date of temporary status and grant of pensionary benefits under CCS (Pension) Rules, 1972, i.e. old pension scheme as was done in cases referred in the representation. However, the same was rejected by the respondent No. 3 vide letter dated 14.09.2016 (Annex. A/2) stating that they were not government servant on or before 31.12.2003. Hence, applicants filed the present OA on the ground that they are appointee of 2001 and they were regularized on 14.06.2007 on the basis of 650 days of work in the consecutive four years from 2001 to 2006 (should be 2003 to 2006) and they were entitled for temporary status from the year 2003. Thus, they sought relief as reproduced in preceding paragraph.

3. The applicants also filed MA No. 290/00080/17 for condonation of delay and stated that technically there is no delay in filing of this OA since representation has been decided on merits and the main relief would be effective in future. The applicants further stated that they were under impression that since they are not new entrants, old pension scheme would be applicable to them as they were appointed in the year 2001 and new pension scheme is applicable w.e.f. 01.01.2004. The date of grant of temporary status may not make any difference to them as

there was no effect on their pay. But after issuance of DoPT OM dated 26.02.2016, the applicants felt imperative to get the initial wrong corrected. Since application moved in the matter has been turned down vide order dated 14.09.2016 and it has been advised that OA could be preferred within one year after rejection, this constituted good and sufficient reason for condonation of delay. Otherwise also, no third party right has accrued to anyone and the applicants have meritorious case for adjudication on merits in the interest of justice.

4. The respondents by way of filing a joint reply, have joined the defence and opposed the claim of the applicants. They stated that the applicants were initially engaged as Seasonal Anti Malaria Lascar in the year 2001. Since these SAMLs were not sponsored by the Employment Exchange and directly recruited on submission of their application to the Station, their services were terminated in the year 2006. Applicants herein, approached this Tribunal by way of OA No. 118/2006 and they were reinstated till finalization of the said OA as an interim measure. This Tribunal vide order dated 14.09.2006 as modified order vide corrigendum dated 20.10.2006 and allowed the said OA and held that the applicants shall be entitled to all consequential benefits including consideration for grant of temporary status and regularization against Group 'D' posts as per SAML Scheme in vogue. In

pursuance of order of this Tribunal, respondents conferred the temporary status to the applicant w.e.f. 27.01.2007 and regularized their services against Group 'D' posts w.e.f. 14.06.2007. All the persons were granted temporary status and subsequently were regularized against permanent posts in the year 2007-08, i.e. much prior to 01.01.2004 from which the New Pension Scheme came into force. The New Pension Scheme is applicable to those persons who are appointed/joined the service on regular basis on or before 31.12.2003. The applicants were casual worker during the period from 2001 to 2007 and casual worker cannot be termed as Government servant. Therefore, applicants are not eligible for any benefits under CCS (Pension) Rules, 1972 and are covered under the New Pension Scheme. After lapse of almost 10 years, applicant No. 1 who was one of the applicant in earlier OA No. 118/2006, submitted application dated 12.04.2016 requesting conferment of temporary status with retrospective date, i.e. from the year 2003 so that they can be placed in the CCS (Pension) Rules, 1972 and would become eligible for GPF. The respondents have stated that the applicants were granted temporary status and were regularized thereafter in compliance of order dated 14.09.2006 passed by this Tribunal in OA No. 118/2006. The effect of regularization can only be prospective and not retrospective. The case of the applicants is not covered by OM dated 26.02.2016 as the applicants are

covered under Air HQ Scheme of SAML (Grant of Temporary Status and Regularization, 1997). As per para 8 of OM dated 26.02.2016, this Scheme was only available to those employees who were in employment on 10.09.1993. Hence, OM dated 26.02.2016 is not applicable on the applicants herein. The respondents thus prayed for dismissal of the OA.

5. By way of rejoinder, applicants reiterated the averments made in the OA.

6. Heard both the parties.

7. Learned counsel for the applicants submitted that applicants were engaged as casual labour (SAML) in the year 2001 and they were continued to be re-engaged in each subsequent season till 2006. However, their services were terminated at the instance of higher authorities when their case was sent for grant of temporary status under SAML Scheme on the ground that their names were not sponsored by Employment Exchange. The applicants approached this Tribunal and in pursuance of order dated 14.09.2006 as modified on 20.10.2006 passed in OA No. 118/2006, were conferred temporary status under SAML Scheme of the respondents in the year 2007, i.e. on 27.01.2007 vide order dated 09.02.2007 and their services were also regularized against permanent Group 'D' posts in the same year, i.e. on 14.06.2007. As per SAML Scheme itself, the applicants should have been

conferred temporary status from the year 2003 as they had already completed 165 days of work as casual labour in 2003. Since the applicants were under the impression that Old Pension Scheme would be applicable to them as they were engaged in the year 2001 and date of grant of temporary status would not make any difference to them. However, DoPT issued OM dated 26.02.2016 whereby casual labours who were granted temporary status under the Scheme of 1993 were entitled for contributing towards GPF and counting 50% of their temporary service towards pension. Therefore, applicant No. 1 filed the representation dated 12.04.2016 which has been rejected by the respondents vide order dated 14.09.2016 (Annex. A/2). He thus contended that the applicants have wrongly been conferred temporary status w.e.f. 27.01.2007 instead of completion of 165 days as casual labour in 2003 itself and thereby, they have been deprived to be covered under the Old Pension Scheme or making their contribution towards GPF and counting of 50% Temporary Service for the purpose of pension. He prayed that order dated 09.02.2007 (Annex. A/1) may be quashed to the extent of granting temporary status w.e.f. 27.01.2007 and applicants be allowed due benefits under CCS (Pension) Rules, 1972.

8. On the other hand, learned counsel for the respondents inter-alia submitted that in pursuance of order dated 14.09.2006 as

modified vide corrigendum dated 20.10.2006 passed by this Tribunal in OA No. 118/2006, the applicants were conferred temporary status w.e.f. 27.01.2007 vide order dated 09.02.2007 and later on, in the same year their services were regularized under SAML Scheme. As such, no grievance remains to the applicants. He further submitted that since New Pension Scheme is applicable from 01.01.2004, and the applicants were conferred temporary status in the year 2007, they are covered under New Pension Scheme. The effect of regularization can only be given prospectively and not retrospectively. He further submitted that as per para 8 of OM dated 26.02.2016 (Annex. A/7), the benefits of temporary status is available to those casual labours who were in employment on 10.09.1993 and in the present case, the applicants were initially engaged in the year 2001 as casual labour and that they were not even casually engaged in the year 1993. He thus prayed that OA may be dismissed. The respondents relied upon following judgments on the issue of limitation:

- (i) State of Orissa & Anr Vs Mamta Mohanty (2011) 3 SCC 436, Head Note L, Para 52 & 54.
- (ii) Pepsu Road Transport Corporation, Patiala through its Managing Director & Anr Vs S.K. Sharma & Ors (2006) 9 SCC 206, Head Note D & Para 12.
- (iii) Union of India & Ors Vs M.K. Sarkar (2010) 2 SCC 59, Head Note C & Para 14,15 & 16.
- (iv) Bhakra Beas Management Board Vs Krishnan Kumar Vij & Anr (2010) 8 SCC 701, Head Note D & Para 37.

- (v) State of Tripura & Ors Vs Arbinda Chakraborty & Ors (2014) 6 SCC 460, Para 15 & 18.

9. I have considered the arguments advanced by the parties and perused the record. Admittedly, the applicants were engaged by the respondents in year 2001 as casual labours (Seasonal Anti-Malaria Lascar) and respondents continued to re-engage them in each subsequent seasons till 2006. In 2006, the services of the applicants were disengaged at the instance of higher authorities when their names were sent for conferring temporary status on the ground that their applications were not sponsored through employment exchange for engagement as SAML by the local establishment. Rather, applicants directly submitted their applications for working as SAML on daily basis during the season. However, at the intervention of this Tribunal, the applicants were re-engaged by an interim order passed in OA No. 118/2006 and finally, vide order dated 14.09.2006 as modified on 20.10.2006, this Tribunal held the applicants entitled for consideration of grant of temporary status and regularization against Group 'D' post as per the SAML Scheme in vogue at that time though their names were not sponsored through Employment Exchange. In compliance of order dated 20.10.2006, respondents conferred the temporary status to the applicants, as well as regularized their services against permanent Group 'D' posts in the year 2007. Since the applicants were conferred

temporary status as well as their services regularized in the year 2007, therefore, they were covered under New Pension Scheme by virtue of Notification dated 22.12.2003 (Annex. A/6) issued by the Govt. of India.

10. The applicants contended that as per SAML Scheme (Annex. A/3), they should have been conferred temporary status after working for 165 days in an office observing six days working for consecutive two years, i.e. from the year 2003 as they were engaged in the year 2001 as SAML and were continuously working in each subsequent season. The conferment of temporary status from the year 2003 would entitle them to be covered under CCS (Pension) Rules, 1972 in view of various judgments of Hon'ble Courts implemented by Govt. of India by issuing OMs. However, respondents vide order dated 09.02.2007 (Annex. A/1) conferred temporary status to the applicants w.e.f. 27.01.2007 instead of 2003. On issuance of OM dated 26.02.2016 (Annex. A/7), the applicants felt it imperative to get the initial wrong corrected ,therefore, applicant No. 1 filed representation which was rejected vide order dated 14.09.2016 (Annex. A/2). Hence, technically, there is no delay in filing the OA since representation has been decided on merits. Even otherwise, their main relief would be effective in the future and no third party right has accrued to any one and they have meritorious case for

adjudication on merits. It has also been contended by the applicants in their application for condonation of delay that they tend to correct initial wrong of not conferring temporary status from the year 2003 when OM dated 26.02.2016 was issued by the DoPT as they were engaged under SAML Scheme in the year 2001. On perusal, OM dated 26.02.2016 appears to have been issued by the DoPT in pursuance of judgments of various Hon'ble Courts upheld by the Hon'ble Supreme Court by dismissing the SLPs filed by the Union of India whereby the casual labour engaged and who have been conferred temporary status prior to 01.01.2004, and contributed towards the GPF Scheme were held to be entitled to contribute towards GPF on their regularization on or after 01.01.2004. Meaning thereby, casual labours who were conferred temporary status prior to 01.01.2004 have been covered under CCS (Pension) Rules, 1972 or Old Pension Scheme. However, the Scheme under consideration of the Hon'ble Courts was "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 granting certain benefits to the casual labours. In the present case, the applicants engaged as seasonal casual labour were considered against Seasonal Anti-Malaria Lascars (Grant of Temporary Status & Regularization) Scheme of IAF, 1997, i.e. SAML Scheme of the respondent-department. In pursuance of this Tribunal's order dated 14.09.2006 & 20.10.2006 (Annex. A/4) passed in OA No.

118/2006, they were conferred temporary status w.e.f. 27.01.2007, i.e. in the year 2007 by the respondents vide order dated 09.02.2007 (Annex. A/1) and their services were also regularized in the year 2007 itself. Despite New Pension Scheme (NPS) being in force and contributing towards NPS each month thereafter from their monthly salary, applicants remained silent.

11. I find no document on record to show that the applicants have ever agitated their grievance before the respondents or any other appropriate forum after issuance of impugned order dated 09.02.2007 (Annex. A/1) prior to 2016 whereby seeking change of their date of grant of temporary status which too was conferred at the intervention of this Tribunal. As such, it appears that they were quite satisfied with the order dated 09.02.2007 (Annex. A/1) passed by the respondents and order passed by this in OA No. 118/2006 attained finality to the satisfaction of the applicants. However, when other casual labours having temporary status prior to 01.01.2004 under another Scheme who got their services regularized on a later date, were granted the benefits of CCS (Pension) Rules, 1972 on successfully contesting the decision of the Union of India, the present applicants have approached this Tribunal challenging Annex. A/1 order after lapse of almost 10 years and are also seeking delay to be condoned in filing the OA.

11. Hon'ble Supreme Court in the State of Uttar Pradesh & Ors Vs Arvind Kumar Srivastava & Ors, (2015) 1 SCC 347 held in para 22 that :

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who

want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

In the present case, the applicants approached this Tribunal after 10 years of conferment of temporary status under SAML Scheme which is applicable to casual labours engaged in a particular season of the year. The applicants were conferred temporary status in the year 2007 vide order dated 09.02.2007 and they chose not to challenge the same for almost 10 years if they had any grievance. Further, they contributed towards the NPS on their regularization in the year 2007 and as such, it is evident that they did not challenge wrongful action, if any, with regard to their date of conferment of temporary status and acquiesced into the same.

12. It is clear that the actual cause of action arose in the year 2007 when the applicants were conferred with temporary status as well as permanent status. The applicants woke up from their deep sleep only for the first time in the year 2016 when they made representation to the respondents that they may be conferred with temporary status from 2003 so that the provisions of Old Pension Scheme, i.e. CCS (Pension) Rules, 1972 would be applicable to them instead of New Pension Scheme dated 22.12.2003. It is also clear that the order dated 14.09.2016 is only reply in relation to the applicants representation dated 12.04.2016. As such, simply making a representation and

receiving reply thereto would not extend the period of limitation automatically. Also, the law does not permit extension of period of limitation by mere filing of a representation. It is settled legal position that the period of limitation would commence from the date on which the cause of action takes place. As per Apex Court judgment in case of State of Karnataka Vs S.M. Kotrayya, 1996 SCC (L&S) 1488, a litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the court within a reasonable time. Therefore the fact that the applicants approached the Tribunal only when relief was granted by court in a similar case cannot be a ground for covering delay and laches. It can be understood from their applications itself that they filed the present OA because of the reason that other casual labours who were conferred temporary status prior to 01.01.2004 in another Scheme approached the court earlier and succeeded in their efforts in the form of OM dated 26.02.2016 and got the benefits of CCS (Pension) Rules, 1972, therefore, they sought to challenge the Annex. A/1 order dated 09.02.2007.

13. In these circumstances, I find no valid justification for condonation of delay. Therefore, I am not inclined to condone the delay in filing the present OA and hence, MA No. 290/00080/17 is

dismissed. Accordingly, the present OA is also dismissed on the ground of delay. No costs.

[Hina P. Shah]
Judicial Member

Ss/-